IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6237 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANUJ KELAVANI MANDAL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR JITENDRA M PATEL for Petitioner(s) : 1,
MR HUKAM SINGH, AGP for Respondent(s) : 1 - 2.
None for Respondent(s) : 3,
MR AN PATEL for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/11/2006

ORAL JUDGMENT

1. Present is a petition by Ranuj Kelavani Mandal, a public Trust under Articles 226/227 of the

Constitution of India, challenging the order dated 8.6.95 passed in Ten.B.A. 1091/94, where under the Tribunal in the revision preferred by the present petitioner had set aside the order which was passed by the Collector on 4.9.94 in Ceiling Appeal No. 11/94 though the State Government did not challenge the correctness, validity and propriety of the order passed by the Collector [Deputy Collector] annexed as Annexure:I to the petition.

2. The short facts necessary for disposal of the present matter are that the land in dispute was given in gift by the village people and was dedicated to the present society so that it could impart education/agricultural training. On 16.3.58, the petitioner filed an application under Section 88B of the Bombay Tenancy & Agricultural Lands Act, 1948, seeking an exemption that though the land was in possession of the tenants, but they may not be deemed to be purchasers. The said application was returned to the petitioner on 16.5.58 with an order that the application may be refiled with required documents. It appears that the matter ended there. On 25.1.62, one Madhuji made an application to purchase 39.10 Acres of land on the ground that he is a tenant. The application was rejected with an

observation that the petitioner was a public Trust constituted for public purposes and to impart education therefore permission could not be granted. On 16.11.83, in Case No. 310/81 pertaining to agricultural ceiling, Mamlatdar/Competent Authority under the Ceiling Act directed the petitioner to surrender 66.34 Acres of land as it was held in excess of the entitlement of the petitioner. The petitioner challenged the said order dated 16.11.83 in Ceiling Appeal No. 20 of 1983, which was dismissed on 30th January, 1984. Present petitioner did not challenge the order dated 30.1.84 and felt content and satisfied with it. One Jesingbhai joined as party-respondent no.3 in these proceedings, filed a revision petition before the Revenue Tribunal, which was ultimately dismissed on 4.12.87. The order dated 4.12.87 was challenged by Jesingbhai in Special Civil Application No. 1175/88, the Trust was not joined as party. It was contended by the said Jesingbhai that the order passed by the authorities be quashed and set aside because he was not heard though his petition for conferral of the rights was pending consideration before the appellate court. The High Court, vide its order dated 13.12.93 allowed the said application. The present

petitioner, after learning about the said order filed Misc. Civil Application No. 218 of 1995 for review/recall of the earlier order dated 13.12.93. The said review petition was allowed on 15.6.95. The petitioner thereafter made an application for his joining as party-respondent. The application was allowed and the petitioner joined the proceedings as party-respondent. The said Special Civil Application No. 1175/88 came to be dismissed on 15.6.05, that was the end of the matter so far as Jesingbhai was concerned.

3. The order dated 16.11.83, which was confirmed by the appellate court in Ceiling Appeal No. 20 of 1983 on 30.1.84 was again challenged by the present petitioner in Ceiling Appeal No. 11/94. The facts of the earlier dismissal were not brought to the notice of the appellate court. This time, Appeal No. 11/94 came to be allowed on 4.9.94 and the appellate court set aside the order dated 16.11.83 and remanded the matter back to the Revenue Tribunal/Competent Authority. The petitioner, still dissatisfied with the order of remand, filed Revision Application No. 1091 of 1994 before the Gujarat Revenue Tribunal, which, by its order dated 86/95 not only dismissed he revision application, but also quashed the order

dated 25.10.94 passed in Ceiling Appeal No. 11/94. The petitioner being aggrieved by the order passed by the Revenue Tribunal is before this Court.

4. Shri J.M. Patel, learned counsel for the petitioner, placing reliance upon the Single Bench judgment of this Court in the matter of *Ajitsinh Chandrasinh Gaikwad & Ors. v. The State of Gujarat & anr. [1997 [2] G.L.H. 579]* submits that in the revision filed by the present petitioner, the order passed by the appellate authority, i.e. the Collector could not be interfered with nor the same could be set aside. He submits that the order dated 25.10.94 passed in Ceiling Appeal No. 11/94 was never challenged by the State Government therefore the order attained finality and the revisional court could not interfere in the matter.

5. From the records, it would clearly appear that against the order dated 16.11.83, passed in Ceiling Case No. 310 of 1981, present petitioner had preferred an appeal before the Deputy Collector, which was registered as Ceiling Appeal No. 21 of 1983 and the same was dismissed on 30.1.84. The order dated 30.1.84 was never challenged by the present petitioner before any authority or the High Court and the same attained finality. It is trite

to say that if an order attains finality then between the same parties, it has the effect of *res judicata* and no party to the matter or any party claiming under the said parties would be allowed to go contrary to the said order. On one side, principles of *res judicata* are to put a check on further and frivolous litigations and at the same time, to maintain the propriety of the judicial system. Once the order dated 30th January, 1984 passed in Ceiling Appeal No. 21 of 1983 attained finality and the order dated 16.11.83 passed by the Competent Authority/Revenue Tribunal merged in the appellate order, the order passed by the Competent Authority could not be challenged independently, specially before the very same appellate court which had once confirmed the order.

6. True it is that the order dated 25.10.94 was not challenged by the State authorities before any appellate forum, but in a given set of circumstances, non-action on the part of the govt. officers for the reasons best known to them, would not allow the court to add premium to the wrong of the present petitioner. Once the revisional court came to a conclusion that the order dated 16.11.83 had attained finality as it was confirmed in Ceiling

Appeal No. 21 of 1983, it certainly was entitled to look into the correctness, validity and propriety of the order dated 25.10.94.

7. A revisional court, ordinarily would not be entitled to interfere in the order which is not challenged and in fact, is in favour of the applicant before it, but in a given set of circumstances, where absolute illegality and breach of law is brought to the notice of the revisional court, then the court cannot close its eyes, bury its nose into the sand like an ostrich and say that it would not interfere because somebody has not challenged the said order.

8. Once it is brought to the notice of the revisional authority that the order passed by the subordinate authority or the Tribunal is patently illegal, void, void ab initio and runs contrary to the mandate of law, then the revisional authority cannot confirm the order because the same has not been challenged. On the principles of merger and attainment of finality, I must hold that the order dated 25.10.94 passed in Ceiling Appeal No. 11/94 was patently illegal, void and absolutely without jurisdiction.

9. It is also trite to say that as a result of the exercise of the powers of the High Court in quashing an illegal order, if some void order starts

surfacing or comes into existence, then the High Court would not interfere in such matter. If the High Court interferes with some illegal order, and as a result of the same, void order comes into existence, then the High Court would not exercise its powers under Art.226/227 of the Constitution of India because such powers are to be exercised in the interest of justice.

10. Examining from every angle, I find that present was a fit case where the Revenue Tribunal could exercise its powers in setting aside an illegal order which was patently without jurisdiction and the High Court would be justified in not interfering with the order passed by the Revenue Tribunal.

11. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief stands vacated. No costs.

[R.S. GARG, J.]

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